

FILED

ACE

NOV - 9 2007

NOV 9 2007

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

ANTHONY MARANO COMPANY,

Plaintiff,

v.

BIMEX, INC., an Illinois corporation d/b/a
Roselle International Food Market,
MIROSLAW KUBAS, WOJCIECH
DZIEWONSKI, KAZIMIERZ
KONIARCZYK, and ZBIGNIEW
KRUCZALAK,

Defendants.

07CV6382
JUDGE LINDBERG
MAG. JUDGE VALDEZ

COMPLAINT

(To enforce payment from Produce Trust)

Plaintiff, ANTHONY MARANO COMPANY (hereinafter "Marano") for its complaint against BIMEX, INC., an Illinois corporation d/b/a Roselle International Food Market, Mirosław Kubas, Wojciech Dziejowski, Kazimierz Koniarczyk, and Zbigniew Kruczalak (hereinafter collectively referred to as "Defendants") allege:

Jurisdiction and Venue

1. Jurisdiction is based on Section on Section 5(c)(5) of the Perishable Agricultural Commodities Act, 7 U.S.C. §499e(c)(5) (hereafter "the PACA"), 28 U.S.C. §1331 and 28 U.S.C. §1332.

2. Venue in this District is based on 28 U.S.C. § 1391 in that (a) Plaintiff's claims arose in this District and (b) Defendants' principal places of business are in this district.

3. Plaintiff Marano is an Illinois corporation with its principal place of business in

Chicago, Illinois. Plaintiff is engaged in the business of buying and selling wholesale quantities of perishable agricultural commodities (hereafter “produce”) in interstate commerce. At all times pertinent herein, Plaintiff was subject to and licensed under the PACA as a dealer under PACA license number 19189931.

4. (a) BIMEX, INC., an Illinois corporation d/b/a Roselle International Food Market (hereinafter “BIMEX, INC.”), having its principal place of business in Roselle, Illinois at all times pertinent herein, was subject to the provisions of the PACA.

(b) Mirosław Kubas, Wojciech Dziwowski, Kazimierz Koniarczyk, and Zbigniew Kruczałak, upon information and belief, were at all times pertinent herein, dealers and commission merchants and subject to the PACA, were also directors, officers, shareholders and/or principals of BIMEX, INC., who carried out the day to day operations of BIMEX, INC., during the period of time in question.

General Allegations

5. This action is brought to enforce the trust provisions of P.L. 98-273, the 1984 amendment to Section 5 of the PACA, 7 U.S.C. § 499 e(c).

6. Between September 20, 2007 and October 15, 2007, Marano sold and delivered to Defendants, in interstate commerce, \$21,890.25 worth of produce (see Statement attached hereto as “Exhibit 1”).

7. Defendants have failed to pay for the produce when payment was due, despite repeated demands and presently owe Marano \$21,890.25, plus costs and interest.

8. At the time of receipt of the produce, Plaintiff became beneficiary in a statutory trust designed to assure payment to produce suppliers. The trust consists of all produce or produce

related assets, including all funds commingled with funds from other sources and all assets procured by such funds, in the possession or control of Defendants since the creation of this trust.

9. Plaintiff Marano preserved its respective interest in the PACA trust in the amount of \$21,890.25, by delivering invoices to Defendants which contain the language required by 7 U.S.C. §499e(c)(4).

10. Defendants' failure and inability to pay shows that Defendants are failing to maintain sufficient assets in the statutory trust to pay Plaintiff and are dissipating trust assets.

Count I

(Failure to Pay Trust Funds)

11. Plaintiff incorporates each and every allegation set forth in paragraphs 1 to 10 above as if fully set forth herein.

12. The failure of Defendants to make payment to Plaintiff of trust funds in the amount of \$21,890.25 from the statutory trust is a violation of the PACA and PACA regulations, and is unlawful.

WHEREFORE, Plaintiff requests an order enforcing payment from the trust by requiring Defendants, BIMEX, INC., an Illinois corporation d/b/a Roselle International Food Market, Mirosław Kubas, Wojciech Dziewonski, Kazimierz Koniarczyk, and Zbigniew Kruczalak, to make immediate payment of \$21,890.25 to Marano.

Count II

(Failure to Pay for Goods Sold)

13. Plaintiff incorporates each and every allegation set forth in paragraphs 1 to 12 above as if fully set forth herein.

14. Defendants failed and refused to pay Plaintiff \$21,890.25 owed to Plaintiff for produce received by Defendants from Plaintiff.

WHEREFORE, Plaintiff requests judgment for Marano and against Defendants, BIMEX, INC., an Illinois corporation d/b/a Roselle International Food Market, Mirosław Kubas, Wojciech Dziewonski, Kazimierz Koniarczyk, and Zbigniew Krucalak in the amount of \$21,890.25, jointly and severally.

Count III

(Unlawful Dissipation of Trust Assets by Corporate Officials -Mirosław Kubas, Wojciech Dziewonski, Kazimierz Koniarczyk, and Zbigniew Krucalak)

15. Plaintiff incorporates each and every allegation set forth in paragraph 1 to 14 above as if fully set forth herein.

16. Mirosław Kubas, Wojciech Dziewonski, Kazimierz Koniarczyk, and Zbigniew Krucalak were directors, officers, shareholders and/or principals of BIMEX, INC. during the period of time in question.

17. Mirosław Kubas, Wojciech Dziewonski, Kazimierz Koniarczyk, and Zbigniew Krucalak failed to direct the corporation to fulfill its statutory duties to preserve PACA trust assets and pay Plaintiff for the produce it supplied.

18. Mirosław Kubas, Wojciech Dziewonski, Kazimierz Koniarczyk, and Zbigniew Krucalak's failure to direct the corporation to maintain PACA trust assets and pay Plaintiff for the produce it supplied was an unlawful dissipation of trust assets by a corporate official.

19. As a result of said unlawful dissipation of trust assets, Plaintiff has been deprived of its rights as beneficiaries in the produce trust and has been denied payment for the produce it supplied.

WHEREFORE, Plaintiff request judgment for Marano and against Mirosław Kubas, Wojciech Dziwonski, Kazimierz Koniarczyk, and Zbigniew Krucalak in the amount of \$21,890.25, jointly and severally.

Count IV

(Failure to Pay Trust Funds - Mirosław Kubas, Wojciech Dziwonski, Kazimierz Koniarczyk, and Zbigniew Krucalak)

20. Plaintiff incorporates each and every allegation set forth in paragraphs 1 to 19 above as if fully set forth herein.

21. BIMEX, INC. is an Illinois corporation.

22. Mirosław Kubas, Wojciech Dziwonski, Kazimierz Koniarczyk, and Zbigniew Krucalak assisted in the operation of BIMEX, INC., and, as individuals, were dealers and commission merchants subject to the PACA.

23. Mirosław Kubas, Wojciech Dziwonski, Kazimierz Koniarczyk, and Zbigniew Krucalak's failure to make payment to Plaintiff of trust funds in the amount of \$21,890.25 to Marano is a violation of the PACA and PACA regulations and is unlawful.

WHEREFORE, Plaintiff requests judgment for Marano and against Mirosław Kubas, Wojciech Dziwonski, Kazimierz Koniarczyk, and Zbigniew Krucalak in the amount of \$21,890.25 and an order against Mirosław Kubas, Wojciech Dziwonski, Kazimierz Koniarczyk, and Zbigniew Krucalak enforcing payment from the trust in said amount.

Count V

(Interest and Attorney's Fees)

24. Plaintiff incorporates each and every allegation set forth in paragraphs 1 to 23 above as if fully set forth herein.

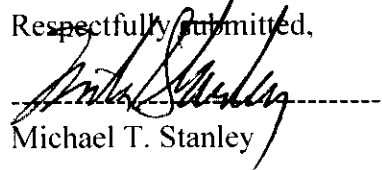
25. As a result of Defendants' failure to make full payment promptly of \$21,890.25 to Marano, Plaintiff has lost the use of said money.

26. As a further result of Defendants' failure to make full payment promptly of \$21,890.25 to Marano, Plaintiff has been required to pay attorney's fees and costs in order to bring this action to require Defendants to comply with their statutory duties.

31. Invoices for produce sold to Defendants in this matter call for interest and attorney fees.

WHEREFORE, Marano requests judgment against each of the Defendants, BIMEX, INC., an Illinois corporation d/b/a Roselle International Food Market, Miroslaw Kubas, Wojciech Dziewonski, Kazimierz Koniarczyk, and Zbigniew Kruczalak, jointly and severally, for prejudgment and post-judgment interest, costs and attorneys fees.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael T. Stanley", is written over a horizontal dashed line.

Michael T. Stanley
Lawrence B. Ordower
Ordower & Ordower, P.C.
One N. LaSalle Street, Ste. 1300
Chicago, IL 60602
(312) 263-5122

C:\Documents and Settings\Michael Stanley\My Documents\M Stanley\Marano\Bimex\AMCvBimexComplaint110707.wpd



ANTHONY MARANO COMPANY

3000 South Ashland Avenue • Suite 100 • Chicago, Illinois 60608-5348
Phone (773) 321-7500 • Fax (773) 321-7578

CUSTOMER
NO.

STATEMENT
DATE

ROSELLE INT FOOD MKT/BIMEX INC NO. R108
825 E. NERGE ST
ROSELLE, IL 60172

11/03/2007

PLEASE CHECK () INVOICES BEING PAID
AND RETURN THIS PORTION WITH YOUR
REMITTANCE

TEAR AT PERFORATION

CUSTOMER
NO.

STATEMENT
DATE

R108

11/03/2007

CUSTOMER NAME
ROSELLE INT FOOD MKT/BIMEX I

AMOUNT
PAID

"The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by Section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received."

Page 1

| TRANS N DATE | INVOICE NO. AGE | CHARGES AMOUNT | PAYMENT AMOUNT | BALANCE AMOUNT | INVOICE NO. ✓ | INVOICE AMOUNT | BALANCE AMOUNT |
|-----------------|--------------------|-------------------|-------------------|-------------------|------------------|-------------------|-------------------|
| 09/20/2007 | A077601 | -148.00 | Ref:A0766-44 | -148.00 | A077601 | -148.00 | -148.00 |
| 09/26/2007 | A084906 | 616.25 | | 616.25 | A084906 | 616.25 | 468.25 |
| 09/26/2007 | A084908 | 150.00 | | 150.00 | A084908 | 150.00 | 618.25 |
| 09/26/2007 | A084918 | 252.00 | | 252.00 | A084918 | 252.00 | 870.25 |
| 09/26/2007 | A084921 | 374.00 | | 374.00 | A084921 | 374.00 | 1,244.25 |
| 09/26/2007 | A084999 | 572.00 | | 572.00 | A084999 | 572.00 | 1,816.25 |
| 09/26/2007 | A085026 | 301.50 | | 301.50 | A085026 | 301.50 | 2,117.75 |
| 09/28/2007 | A087222 | -18.00 | Ref:A0849-06 | -18.00 | A087222 | -18.00 | 2,099.75 |
| 09/28/2007 | A088990 | 146.00 | | 146.00 | A088990 | 146.00 | 2,245.75 |
| 09/28/2007 | A088994 | 222.00 | | 222.00 | A088994 | 222.00 | 2,467.75 |
| 09/28/2007 | A089009 | 741.75 | | 741.75 | A089009 | 741.75 | 3,209.50 |
| 09/28/2007 | A089019 | 106.00 | | 106.00 | A089019 | 106.00 | 3,315.50 |
| 09/28/2007 | A089027 | 383.50 | | 383.50 | A089027 | 383.50 | 3,699.00 |
| 09/28/2007 | A089036 | 498.00 | | 498.00 | A089036 | 498.00 | 4,197.00 |
| 09/28/2007 | A089080 | 93.00 | | 93.00 | A089080 | 93.00 | 4,290.00 |
| 10/01/2007 | A089153 | 524.00 | | 524.00 | A089153 | 524.00 | 4,814.00 |
| 10/01/2007 | A089159 | 183.00 | | 183.00 | A089159 | 183.00 | 4,997.00 |
| 10/01/2007 | A092191 | 258.00 | | 258.00 | A092191 | 258.00 | 5,255.00 |
| 10/01/2007 | A092196 | 697.00 | | 697.00 | A092196 | 697.00 | 5,952.00 |
| 10/01/2007 | A092197 | 385.00 | | 385.00 | A092197 | 385.00 | 6,337.00 |
| 10/01/2007 | A092211 | 180.00 | | 180.00 | A092211 | 180.00 | 6,517.00 |
| 10/01/2007 | A092243 | 538.50 | | 538.50 | A092243 | 538.50 | 7,055.50 |
| 10/01/2007 | A092307 | 24.00 | | 24.00 | A092307 | 24.00 | 7,079.50 |
| 10/01/2007 | A092444 | 110.00 | | 110.00 | A092444 | 110.00 | 7,189.50 |
| 10/01/2007 | A092479 | 178.64 | | 178.64 | A092479 | 178.64 | 7,368.14 |
| 10/01/2007 | A092521 | 453.00 | | 453.00 | A092521 | 453.00 | 7,821.14 |
| 10/01/2007 | A092523 | 26.00 | | 26.00 | A092523 | 26.00 | 7,847.14 |
| 10/02/2007 | A094026 | -12.00 | Ref:A0921-96 | -12.00 | A094026 | -12.00 | 7,835.14 |

Continued

TERMS: NET 10 DAYS FOLLOWING DATE OF PURCHASES*

* A finance charge of 1 - 1/2% per month (annual fee 18%) will be charged on past due balances over 30 days. In the event legal action is commenced to collect the balance due under this invoice, the prevailing party shall be entitled to recover all Court costs and reasonable attorneys' fees incurred thereby.



ANTHONY MARANO COMPANY

3000 South Ashland Avenue • Suite 100 • Chicago, Illinois 60608-5348
Phone (773) 321-7500 • Fax (773) 321-7578

CUSTOMER
NO. R108

STATEMENT
DATE

11/03/2007

ROSELLE INT FOOD MKT/BIMEX INC
825 E. NERGE ST
ROSELLE, IL 60172

PLEASE CHECK ☐ INVOICES BEING PAID
AND RETURN THIS PORTION WITH YOUR
REMITTANCE

TEAR AT PERFORATION

CUSTOMER
NO. R108

STATEMENT
DATE

11/03/2007

CUSTOMER NAME
ROSELLE INT FOOD MKT/BIMEX I

AMOUNT
PAID

"The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by Section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received."

Page 2

| TRANSN DATE | INVOICE NO. AGE | CHARGES AMOUNT | PAYMENT AMOUNT | BALANCE AMOUNT | INVOICE NO. ✓ | INVOICE AMOUNT | BALANCE AMOUNT |
|----------------|--------------------|-------------------|-------------------|-------------------|------------------|-------------------|-------------------|
| 10/02/2007 | A092814 | 343.50 | | 343.50 | A092814 | 343.50 | 8,178.64 |
| 10/03/2007 | A094287 | -18.00 | Ref: A0921-97 | -18.00 | A094287 | -18.00 | 8,160.64 |
| 10/03/2007 | A095006 | 273.00 | | 273.00 | A095006 | 273.00 | 8,433.64 |
| 10/03/2007 | A095016 | 203.25 | | 203.25 | A095016 | 203.25 | 8,636.89 |
| 10/03/2007 | A095021 | 208.00 | | 208.00 | A095021 | 208.00 | 8,844.89 |
| 10/03/2007 | A095024 | 318.50 | | 318.50 | A095024 | 318.50 | 9,163.39 |
| 10/03/2007 | A095029 | 304.00 | | 304.00 | A095029 | 304.00 | 9,467.39 |
| 10/03/2007 | A095037 | 487.50 | | 487.50 | A095037 | 487.50 | 9,954.89 |
| 10/03/2007 | A095040 | 450.00 | | 450.00 | A095040 | 450.00 | 10,404.89 |
| 10/03/2007 | A095044 | 548.00 | | 548.00 | A095044 | 548.00 | 10,952.89 |
| 10/03/2007 | A095181 | 24.00 | | 24.00 | A095181 | 24.00 | 10,976.89 |
| 10/05/2007 | A098503 | 258.00 | | 258.00 | A098503 | 258.00 | 11,234.89 |
| 10/05/2007 | A098506 | 673.50 | | 673.50 | A098506 | 673.50 | 11,908.39 |
| 10/05/2007 | A098515 | 534.50 | | 534.50 | A098515 | 534.50 | 12,442.89 |
| 10/05/2007 | A098517 | 140.00 | | 140.00 | A098517 | 140.00 | 12,582.89 |
| 10/05/2007 | A098541 | 412.00 | | 412.00 | A098541 | 412.00 | 12,994.89 |
| 10/05/2007 | A098615 | 629.25 | | 629.25 | A098615 | 629.25 | 13,624.14 |
| 10/05/2007 | A098781 | 18.00 | | 18.00 | A098781 | 18.00 | 13,642.14 |
| 10/05/2007 | A098908 | 32.00 | | 32.00 | A098908 | 32.00 | 13,674.14 |
| 10/05/2007 | A098953 | 12.00 | | 12.00 | A098953 | 12.00 | 13,686.14 |
| 10/08/2007 | A099981 | -32.00 | Ref: A0950-37 | -32.00 | A099981 | -32.00 | 13,654.14 |
| 10/08/2007 | A099140 | 15.75 | | 15.75 | A099140 | 15.75 | 13,669.89 |
| 10/08/2007 | A101806 | 332.00 | | 332.00 | A101806 | 332.00 | 14,001.89 |
| 10/08/2007 | A101813 | 244.00 | | 244.00 | A101813 | 244.00 | 14,245.89 |
| 10/08/2007 | A101845 | 411.50 | | 411.50 | A101845 | 411.50 | 14,657.39 |
| 10/08/2007 | A101865 | 274.00 | | 274.00 | A101865 | 274.00 | 14,931.39 |
| 10/08/2007 | A101876 | 471.00 | | 471.00 | A101876 | 471.00 | 15,402.39 |
| 10/08/2007 | A101878 | 539.00 | | 539.00 | A101878 | 539.00 | 15,941.39 |

Continued

TERMS: NET 10 DAYS FOLLOWING DATE OF PURCHASES*

* A finance charge of 1 - 1/2% per month (annual fee 18%) will be charged on past due balances over 30 days. In the event legal action is commenced to collect the balance due under this invoice, the prevailing party shall be entitled to recover all Court costs and reasonable attorneys' fees incurred thereby.



ANTHONY MARANO COMPANY

3000 South Ashland Avenue • Suite 100 • Chicago, Illinois 60608-5348
Phone (773) 321-7500 • Fax (773) 321-7578

CUSTOMER NO. R108
ROSELLE INT FOOD MKT/BIMEX INC
825 E. NERGE ST
ROSELLE, IL 60172

STATEMENT DATE
11/03/2007

PLEASE CHECK () INVOICES BEING PAID
AND RETURN THIS PORTION WITH YOUR
REMITTANCE

TEAR AT SEPARATION

CUSTOMER NO. R108
STATEMENT DATE 11/03/2007

CUSTOMER NAME
ROSELLE INT FOOD MKT/BIMEX I

AMOUNT PAID

"The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by Section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received."

Page 3

| TRANS N DATE | INVOICE NO. AGE | CHARGES AMOUNT | PAYMENT AMOUNT | BALANCE AMOUNT | INVOICE NO. ✓ | INVOICE AMOUNT | BALANCE AMOUNT |
|--------------|-----------------|----------------|----------------|----------------|---------------|----------------|----------------|
| 10/08/2007 | A101882 | 244.86 | | 244.86 | A101882 | 244.86 | 16,186.25 |
| 10/08/2007 | A101909 | 32.50 | | 32.50 | A101909 | 32.50 | 16,218.75 |
| 10/08/2007 | A101917 | 656.00 | | 656.00 | A101917 | 656.00 | 16,874.75 |
| 10/10/2007 | A104769 | 180.00 | | 180.00 | A104769 | 180.00 | 17,054.75 |
| 10/10/2007 | A104773 | 136.00 | | 136.00 | A104773 | 136.00 | 17,190.75 |
| 10/10/2007 | A104778 | 322.00 | | 322.00 | A104778 | 322.00 | 17,512.75 |
| 10/10/2007 | A104797 | 432.00 | | 432.00 | A104797 | 432.00 | 17,944.75 |
| 10/10/2007 | A104804 | 709.00 | | 709.00 | A104804 | 709.00 | 18,653.75 |
| 10/10/2007 | A104806 | 720.25 | | 720.25 | A104806 | 720.25 | 19,374.00 |
| 10/10/2007 | A104875 | 286.00 | | 286.00 | A104875 | 286.00 | 19,660.00 |
| 10/10/2007 | A104899 | 22.00 | | 22.00 | A104899 | 22.00 | 19,682.00 |
| 10/12/2007 | A108286 | -88.00 | Ref: A1018-65 | -88.00 | A108286 | -88.00 | 19,594.00 |
| 10/12/2007 | A108281 | 180.00 | | 180.00 | A108281 | 180.00 | 19,774.00 |
| 10/12/2007 | A108285 | 298.00 | | 298.00 | A108285 | 298.00 | 20,072.00 |
| 10/12/2007 | A108316 | 284.75 | | 284.75 | A108316 | 284.75 | 20,356.75 |
| 10/12/2007 | A108319 | 562.50 | | 562.50 | A108319 | 562.50 | 20,919.25 |
| 10/12/2007 | A108441 | 349.00 | | 349.00 | A108441 | 349.00 | 21,268.25 |
| 10/12/2007 | A108503 | 296.00 | | 296.00 | A108503 | 296.00 | 21,564.25 |
| 10/12/2007 | A108578 | 30.00 | | 30.00 | A108578 | 30.00 | 21,594.25 |
| 10/12/2007 | A108622 | 22.00 | | 22.00 | A108622 | 22.00 | 21,616.25 |
| 10/12/2007 | A108751 | 32.00 | | 32.00 | A108751 | 32.00 | 21,648.25 |
| 10/12/2007 | A108753 | 40.00 | | 40.00 | A108753 | 40.00 | 21,688.25 |
| 10/15/2007 | A108843 | 202.00 | | 202.00 | A108843 | 202.00 | 21,890.25 |
| | | Final Balance | | 21,890.25 | | | |

TERMS: NET 10 DAYS FOLLOWING DATE OF PURCHASES*

* A finance charge of 1 - 1/2% per month (annual fee 18%) will be charged on past due balances over 30 days. In the event legal action is commenced to collect the balance due under this invoice, the prevailing party shall be entitled to recover all costs and reasonable attorney's fees incurred thereby.